

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

FILED

United States District Court for the Eastern District of New York

APR 27 2004

Name	Terry Smith	
Place of Confinement	Green Haven Correctional Facility P.O. Box 4000 Stormville, New York 12582	
Name of Petitioner (include name under which convicted)	Name of Respondent (warden or superintendent) of your prison)	
Terry Smith		V. WILLIAM PHILLIPS, Superintendent of Green Haven Correctional Facility
PETITION		
1. Name and location of court which entered the judgment of conviction under attack	County Court 210 Center Drive P.O. Box 9007 Riverhead NY 11901	
2. Name and address of lawyer who represented you	Legal Aid Society 210 Center Drive Riverhead NY 11901	
3. Date of judgment of conviction	April 8, 1998	
4. Length of sentence	17 1/2 to life	
5. Nature of offense involved (all counts)	Possession of Stolen Property 3rd	
6. What was your plea? (Check one)		
(a) Not Guilty	<input checked="" type="checkbox"/>	
(b) Guilty	<input type="checkbox"/>	
(c) Nolo Contendere	<input type="checkbox"/>	
If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:		
7. If you pleaded not guilty, what kind of trial did you have? (check one)		
(a) Jury	<input checked="" type="checkbox"/>	
(b) Judge only	<input type="checkbox"/>	
8. Did you testify at the trial?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
9. Did you appeal from the judgment of conviction?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

10. If you did appeal, answer the following:

(a) Name of Court Appellate Division Second Dept.

(b) Name and address of lawyer who represented you Legal Aid-Society 210 Center Drive Riverhead NY 11901

(c) Result Denied

(d) Date of result and citation, if known _____

(e) Grounds raised Court Abused its discretion, with Drawing Plea, Bermudez Conn, Price of Property

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

(1) Name of court Court of Appeals

(2) Name and address of lawyer who represented you Legal Aide 210 Center

(3) Result Denied

(4) Date of result and citation, if known _____

(5) Grounds raised Same

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

(1) Name and address of lawyer who represented you _____

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes No

12. If your answer to 11 was "yes," give the following information:

(a) (1) Name of court Federal Court House Eastern District

(2) Name and address of lawyer who represented you Terry Smith

(3) Nature of proceeding Habeas Corpus

(4) Grounds raised Same

13.

STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY. IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL, YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF. YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY.

Ground(s):

See Opposition Brief

14.

TIMELINESS OF PETITION: If your judgment of conviction was made final over one year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

This Court may grant habeas relief only if the State Courts decision "was contrary to, or involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the U.S." 28 USC. See Williams v Taylor 529 US 362 412 (2000) See Gilchrist v Okla 260 F3d 89,93 (ad Cir 2001)

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

- (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes No

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____
Washington County

(b) Give date and length of the above sentence: 1 1/2 - 3

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under the penalty of perjury that the foregoing is true and correct. Executed on

4/19/04
(date)

Terry Smith
Signature of Petitioner
Greenhaven Corr.Fac
Address
Po Box 4000
Stormville, N.Y. 12582

I declare under penalty of perjury that on 4/19/04, I delivered this petition to prison authorities to be mailed to the United States District Court for the Eastern District of New York.

Terry Smith
Signature of Petitioner

**SEE COURT FILES FOR
EXHIBIT(S)**